

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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KEVIN RICHARDSON,

Plaintiff,

v.

UNITED STATES ATTORNEY,

Defendants.

Case No. 3:18-CV-00179-MMD-CBC

REPORT AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B). For the reason set forth below, it is recommended that plaintiff's complaint be dismissed with prejudice.

### **I. BACKGROUND**

On March 6, 2019, Richardson filed a civil rights complaint alleging "... complete immunity . . . never to be detained – arrested – charged – tried – convicted -sentenced, granted by, Highest United States Government, and Worldwide Government(s)." (ECF No. 17.)<sup>1</sup> Richardson also apparently seeks, among other things, that this court intervene in "government repositories – banks[,] some highly secured accounts[,] 20 or more verification i[.]e[.] . . . fingerprint – retina scan – D.N.A. [sic]." (*Id.*) Richardson has also filed a new application to proceed *in forma pauperis*. (ECF No. 6.)

Richardson also filed a Motion "Under Rule 13 Counterclaim and Crossclaim" (ECF No. 14), which appears, in actuality, to be a Motion for Reconsideration of the Court's

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<sup>1</sup> Richardson initially filed a complaint on January 3, 2019, (ECF No. 15), however, the new complaint (ECF No. 17) supersedes the original complaint in its entirety. Therefore, this Report and Recommendation will only address and screen the most recent complaint, ECF No. 17.

1 prior decision striking Richardson's Motion Under Rule 12(g) Joining Motions. (ECF No.  
 2 10.) In addition, it appears to be a motion to hold an unknown party in criminal contempt.  
 3 (*Id.*) Finally, Richardson filed a Motion for the Appointment of Counsel (ECF No. 16), and  
 4 a Motion for Declaratory Judgment (ECF No. 18).

5 However, the Court finds that Richardson's complaint fails to state a claim upon  
 6 which relief may be granted, and is in fact frivolous. Therefore, the Court recommends  
 7 that Richardson's complaint and Motion Under Rule 13 be dismissed with prejudice.

## 8 **II. DISCUSSION**

### 9 **A. Application for Leave to Proceed In Forma Pauperis**

10 A person may be granted permission to proceed in forma pauperis if the person  
 11 "submits an affidavit that includes a statement of all assets such [person] possesses [and]  
 12 that the person is unable to pay such fees or give security therefor. Such affidavit shall  
 13 state the nature of the action, defense or appeal and affiant's belief that the person is  
 14 entitled to redress. 28 U.S.C. § 1915(a)(1). "[T]he supporting affidavits [must] state the  
 15 facts as to the affiant's poverty with some particularity, definiteness, and certainty."  
 16 *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (per curiam) (citing  
 17 *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)). The litigant need not "be  
 18 absolutely destitute to enjoy the benefits of the statute." *Adkins v. E.I. du Pont De*  
 19 *Nemours & Co.*, 335 U.S. 331, 339 (1948).

20 Richardson has filed a new application to proceed *in forma pauperis*. (ECF No.  
 21 6.) In his application and financial affidavit, Richardson states that he "has vast resources,  
 22 including infinite wealth," yet reports that he only has \$150 in his inmate account and later  
 23 states he "has no understanding where this information comes from, [it] will show only  
 24 limited funds, and resources. (*Id.*) Because Richardson apparently has limited access  
 25 to money, the Court recommends that the motion for *in forma pauperis* (ECF No. 6) be  
 26 granted.

27 However, pursuant to 28 U.S.C. § 1915, Richardson must pay the full amount of  
 28 the filing fee over time. Richardson should be ordered to pay within thirty days of an order

1 adopting and accepting this report and recommendation, the initial partial filing fee of 20  
2 percent of the greater of the average monthly deposits to his account or the average  
3 monthly balance in his account for the six-month period immediately preceding the filing  
4 of the complaint. Richardson should thereafter be required to make monthly payments  
5 of 20 percent of the preceding month's income credited to his prisoner account, and the  
6 NDOC or other agency in custody of Richardson should forward payments from  
7 Richardson's account to the clerk of the court each time the amount in the account  
8 exceeds \$10 until the filing fee is paid.

9 B. Failure to State a Claim

10 Pursuant to 28 U.S.C. §1915(e)(2), a federal court must dismiss a case in which  
11 *in forma pauperis* status is granted, "if the allegation of poverty is untrue," or the action  
12 "is frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks  
13 monetary relief against a defendant who is immune from such relief." 28 U.S.C. §  
14 1915(e)(2).

15 Dismissal of a complaint for failure to state a claim upon which relief may be  
16 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the Court applies  
17 the same standard under §1915 when reviewing the adequacy of a complaint or amended  
18 complaint. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *North*  
19 *Star Inter'l v. Arizona Corp. Comm.*, 720 F.2d 578 (9th Cir. 1983). In considering whether  
20 a plaintiff has stated a claim upon which relief may be granted, all material allegations in  
21 the complaint are accepted as true and are construed in the light most favorable to the  
22 plaintiff. *Russell v. Landrieu*, 621 F.2d 1037 (9th Cir. 1980). Allegations of a *pro se*  
23 complaint are held to less stringent standards than formal pleadings drafted by lawyers.  
24 *Haines v. Kerner*, 404 U.S. 519 (1972) (per curiam).

25 However, if it appears to a certainty that a plaintiff will not be entitled to relief under  
26 any set of facts that could be proven under the allegations of the complaint, the court may  
27 *sua sponte* dismiss the complaint or portions of it. *Halet v. Wand Investment Co.*, 672  
28 F.2d 1305 (9th Cir. 1982). All or part of a complaint filed may therefore be dismissed *sua*

1 *sponte* if the claims lack an arguable basis either in law or in fact. See *Neitzke v. Williams*,  
 2 490 U.S. 319, 327-28 (1989). This includes claims based on legal conclusions that are  
 3 untenable (e.g., claims against defendants who are immune from suit or claims of  
 4 infringement of a legal interest which clearly does not exist) as well as claims based on  
 5 fanciful factual allegations, (e.g., fantastic or delusional scenarios).

6 Richardson's complaint does not appear to state what conduct or actions any of  
 7 the defendants took against him that give rise to any claims for relief. In fact, the complaint  
 8 does not appear to state a cause of action of any kind. Rather, the complaint simply  
 9 states Richardson is "currently held illegally" at the Northern Nevada Correctional Center  
 10 and that Richardson apparently has, "complete immunity . . . never to be detained –  
 11 arrested – charged – tried – convicted -sentenced, granted by, Highest United States  
 12 Government, and Worldwide Government(s)." (ECF No. 17.) The complaint appears to  
 13 request, among other things, that this court intervene in "government repositories –  
 14 banks[,] some highly secured accounts[,] 20 or more verification i[.]e[.] . . . [.] fingerprint –  
 15 retina scan – D.N.A. [sic]." (*Id.*) These allegations do not state a cause of action and are  
 16 either untenable legal conclusions or fanciful factual allegations.

17 In addition, based on the facts as alleged in the complaint, it is plain that there are  
 18 no facts or set of facts that could be alleged that could cure the deficiencies in the  
 19 complaint. Therefore, any attempt to amend the complaint would be futile. Fed. R. Civ.  
 20 Pro. 15(a); *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011)  
 21 (leave to amend should be denied if amendment would be futile).

22 Therefore, the complaint should be dismissed with prejudice. In addition, plaintiff  
 23 should be assessed a strike under 28 U.S.C. § 1915(g) for bringing this action that is  
 24 "frivolous, malicious, or fails to state a claim upon which relief may be granted."

### 25 **III. CONCLUSION**

26 Based on all of the above, it is recommended that Richardson's complaint be  
 27 dismissed with prejudice, and that Richardson should be assessed a strike under 28  
 28 U.S.C. § 1915(g).

1  
2 The parties are advised:

3 1. Pursuant to 28 U.S.C § 636(b)(1)(C) and Rule IB 3-2 of the Local Rules of  
4 Practice, the parties may file specific written objections to this report and recommendation  
5 within fourteen days of receipt. These objections should be entitled "Objections to  
6 Magistrate Judge's Report and Recommendation" and should be accompanied by points  
7 and authorities for consideration by the District Court.

8 2. This report and recommendation is not an appealable order and any notice  
9 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District  
10 Court's judgment.

11 **IV. RECOMMENDATION**

12 **IT IS THEREFORE RECOMMENDED** that the district court enter an order as  
13 follows:

14 1. **GRANTING** plaintiff's motion to proceed in forma pauperis (ECF No. 6); and  
15 ordering, plaintiff to pay the full amount of the filing fee over time. Plaintiff should be  
16 ordered to pay within thirty (30) days of any order adopting and accepting this report and  
17 recommendation, the initial partial filing fee of 20 percent of the greater of the average  
18 monthly deposits to his account or the average monthly balance to his account for the six  
19 month period immediately preceding the filing of the complaint. Plaintiff should thereafter  
20 be required to make monthly payments of 20 percent of the preceding month's income  
21 credited to his prisoner account, and the NDOC or other agency in custody of plaintiff  
22 shall forward payments from plaintiff's account to the clerk of the court each time the  
23 amount in the account exceeds \$10 until the filing fees are paid;

24 2. **ORDERING** the Clerk to file and docket plaintiff's complaint (ECF No. 15);


25 3. **DISMISSING** plaintiff's complaint WITH PREJUDICE;

26 4. **DENYING** plaintiff's Motion Under Rule 13 (ECF No. 14);

27 5. **DENYING** plaintiff's Motion for Appointment of Counsel (ECF No. 16); and

28 6. **DENYING** plaintiff's Motion for Declaratory Judgment (ECF No. 18).

DATED: April 18, 2019.

  
UNITED STATES MAGISTRATE JUDGE